

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-1130243-D1  
AND ALL OTHER SEAMAN DOCUMENTS  
Issued to: Philip R. BRYANT

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1896

Philip R. BRYANT

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 9 August 1971, an Administrative Law Judge of the United States Coast Guard at Seattle, Washington revoked Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as a messman on board the United States SS INDIAN MAIL under authority of the document above captioned, on or about 22 May 1971 Appellant did wrongfully have in his possession a quantity of marijuana contained in approximately eight cigarettes while said vessel was at Nagoya, Japan.

At the hearing, Appellant elected to act as his own counsel. Appellant entered a plea of guilty to the charge and specification.

The Investigating Officer introduced no evidence.

In defense, Appellant offered in evidence his own statement and a letter from a fraternal organization.

At the end of the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and specification had been proved by plea. The Administrative Law Judge then entered an order revoking all documents, issued to Appellant.

The entire decision was served on 13 August 1971. Appeal was timely filed on 9 September 1971.

FINDINGS OF FACT

On 22 May 1971, Appellant was serving as a messman on board the United States SS INDIAN MAIL and acting under authority of his document while the ship was in the port of Nagoya City, Japan.

On 22 May 1971, the Appellant was apprehended by local police at Nagoya City, Japan, on suspicion of being in possession of marijuana. A search of his quarters aboard the SS INDIAN MAIL disclosed some eight cigarettes, which were determined by the authorities to contain marijuana, in a package of Marlboro cigarettes. The Appellant was held in jail from 22 May to 30 May and following his release remained in immigration detention for fourteen days before flying back to the United States at his own expense.

Appellant was under a state of mental depression at this time because he had learned that his mother with whom he resides was quite ill. He resorted to the use of marijuana to ease this disturbance. The Appellant first used marijuana in 1951 while he was in the United States Army in Korea. He had not used marijuana since that time.

#### BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is urged that "the use of marijuana was experimental, under stress; that the evidence of one use 20 years prior did not show it was not experimental and deprivation of livelihood under these circumstances was too harsh."

APPEARANCE: Howard R. Lonergan, Esquire Portland, Oregon.

#### OPINION

Appellant's contention on appeal is that the use of marijuana in this case was experimental and should be excused under 46 CFR 137.03-4. That section permits an Administrative Law Judge to enter an order less than revocation when he is satisfied that the use was the result of experimentation by the person and that the person has submitted satisfactory evidence that such use will not recur.

The determination is for the Administrative Law Judge to make as the trier of fact and his findings must be upheld on appeal if based on substantial evidence of a reliable and probative nature. Decision on Appeal No. 1753.

The evidence available upon which the Administrative Law Judge relied was that the Appellant used marijuana for the purpose of alleviating his mental anguish, that he had in his possession some eight unused cigarettes, and that he had used marijuana on one prior occasion. While the use of marijuana some 20 years prior is not particularly persuasive evidence one way or the other, the case does not turn upon this fact. It is incumbent upon the Appellant

to offer satisfactory evidence that the use was experimental and that it would not recur. The only evidence offered in this regard were statements by the Appellant that: "I intended, very much, to relieve myself of the cigarettes by disposing of them." and that: "I sincerely believe that I have learned my lesson to never indulge in anything like this again." This evidence was not sufficient to satisfy the trier of fact. To the contrary, the evidence of prior use and the possession of several unused cigarettes is substantial evidence that the use was not the result of experimentation within the meaning of 46 CFR 137.03-4. See: Decision on Appeal No. 1847.

The only other point raised by Appellant is that revocation is too harsh a penalty for this offense. Once the charge and specification are found proved, revocation of the documents in question is the only appropriate order.

ORDER

The order of the Administrative Law Judge dated at Seattle, Washington on 9 August 1971, is AFFIRMED.

C. R. BENDER  
Admiral, U. S. Coast Guard  
Commandant

Signed at Washington, D. C., this 13th day of Nov. 1972.

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